

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Linda Szyrkowicz,
Middletown

File No. 2016-093

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Joseph C. Serra, of the Town of Middletown, County of Middlesex, State of Connecticut (hereinafter "Respondent") and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b 54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The Complainant alleged that during the voting hours of the November 8, 2016 election Respondent and Middletown Councilman Thomas J. Serra engaged in electioneering within the "75 feet" from the entrance of a polling place restricted zone and remained within several polling places in violation of General Statutes § 9-236 (a) & (c).
2. By way of background, the "Fayerweather Building – Beckham Hall" is a single building at Wesleyan University that is open to the public for use as "meetings and events" space. Further, Beckham Hall, which is part of the Fayerweather Building, is used for social and public events and by the City of Middletown as the District 14 polling place location.
3. At all times relevant to this complaint, Respondent was an incumbent State Representative and candidate for reelection on the ballot at the November 8, 2016 election. Specifically, Respondent appeared on the ballots used at the District 14 Beckham Hall polling place location and the District 4 Moody School polling place location in Middletown.
4. This disposition pertains to allegations against Respondent alone. Allegations against Thomas J. Serra are under a separate disposition.
5. General Statutes § 9-236 reads, in pertinent part:
 - (a) ***On the day of any primary, referendum or election***, no person shall solicit on behalf of or in opposition to the candidacy of another or himself or on behalf of or in opposition to any question being submitted at the election or referendum, ***or loiter*** or peddle or offer any advertising matter, ballot or circular to another person

within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach. ...

(b) (1) The selectmen shall provide suitable markers to indicate the seventy-five-foot distance from such entrance. Such markers shall consist of a board resting on an iron rod, which board shall be not less than twelve inches square and painted a bright color and shall bear the figures and letters "75 feet" and the following words: "On the day of any primary, referendum or election no person shall solicit in behalf of or in opposition to another or himself or peddle or offer any ballot, advertising matter or circular to another person or loiter within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach."

...
(3) The moderator and the moderator's assistants shall meet at least twenty minutes before the opening of a primary, referendum or an election in the voting district, and shall cause to be placed by a police officer or constable, or such other primary or election official as they select, a suitable number of distance markers. Such moderator or any police officer or constable shall prohibit loitering and peddling of tickets within that distance.

(c) No person except those permitted or exempt under this section or section 9-236a and primary or election officials and party checkers appointed under section 9-235 shall be allowed within any polling place except for the purpose of casting his vote.

Representatives of the news media shall be allowed to enter, remain within and leave any polling place or restricted area surrounding any polling place to observe the election, provided any such representative who in any way interferes with the orderly process of voting shall be evicted by the moderator. ... (Emphasis added.)

6. In a written response to this complaint and investigation, Respondent admitted that Respondent entered Fayerweather Hall for “approximately five minutes” to use the restroom. The Commission notes that Respondent however denied entering Beckham Hall while in the Fayerweather Hall building. Additionally, Respondent admitted to entering Moody School to use the bathroom, but again denied entering the polling place at that location.
7. After investigation, the Commission finds that Respondent was registered to vote in Middletown at District 17 and therefore could not have been at other voting district polling places to cast a ballot.
8. The Commission finds that Respondent was present at District 14 polling place at Beckham Hall at approximately 11:00 AM. The evidence indicates that Respondent was asked to leave and left upon request. Further, the Commission finds that Respondent’s presence at District 14 polling place within the polls was confirmed by the moderator’s diary from the Beckham Hall polling place, which contained the following entry: *“10:30 or so – Joe Serra [was] asked to leave the hallway right outside the polling place area – He left.”* The Respondent denies he was ever asked to leave the District 14 polling place.
9. Additionally, the Commission finds that District 14 election officials witnessed Respondent at the entrance to the polling place. According to election officials Respondent indicated that he was present to make sure the seniors “were getting an opportunity to vote.” Finally, the Commission finds that Respondent was asked to leave by District 14 election officials and Respondent complied with this request.
10. The Commission finds that Respondent was also present at the Districts 4 & 5 polling place at Moody School within the polling place. Specifically, the Commission finds credible witness accounts of Respondent being present within the polling place at Moody School during the hours of voting on November 8, 2016. The Respondent maintains that he entered Moody School on one occasion only to use the restroom.
11. After a thorough review and investigation, the Commission concludes that Respondent violated § 9-236 (a) and (c), on two occasions by entering a polling place and within the “75 feet” restricted zone at the District 14 polling place at Beckham Hall and the District 4 polling place at the Moody School in Middletown during the hours of voting on November 8, 2016 for purposes other than voting and while he appeared on the ballot as a candidate for state representative in both voting districts.

12. The Commission notes that the purpose for which Respondent entered buildings that contained polling places in Middletown on November 8, 2016 is not dispositive for applying General Statutes § 9-236; but rather, the fact that Respondent entered and *remained* in polling places for purposes other than casting a ballot after accessing such buildings is determinative in this instance.
13. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining whether a civil penalty will be assessed, and if so, the amount of such civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
 - (1) the gravity of the act or omission;
 - (2) the amount necessary to insure immediate and continued compliance;
 - (3) the previous history of similar acts or omissions; and
 - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
14. The Commission determines that because the Respondent was also an incumbent State Representative appearing on the ballot at the November 8, 2016 election when the violations detailed herein took place a reprimand is appropriate under these circumstances in light of Regulations of Connecticut State Agencies § 9-7b-48.
15. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
16. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
17. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.


18. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to these matters and this Respondent.

ORDER

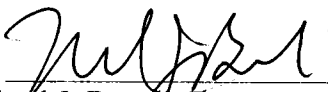
IT IS ORDERED THAT Respondent will henceforth strictly comply with the requirements of General Statutes § 9-236.

IT IS FURTHER ORDERED THAT Respondent is Reprimanded, for purposes of full settlement of this matter.

The Respondent:


Joseph C. Serra
1910 Randolph Road
Middletown, Connecticut

For the State of Connecticut:

BY: 
Michael J. Brandt, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, Connecticut

Dated: May 7, 2018

Dated: 5/9/18

Adopted this 16th day of MAY of 2018 at Hartford, Connecticut


~~Anthony J. Castagno, Chair~~ Salvatore
By Order of the Commission Bramante

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STATE ELECTIONS

MAY 09 2018

ENFORCEMENT COMMISSION